UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:)	
UNITED PARCEL SERVICE, INC.,)))	
Respondent,)	
-) Case No. 26-CA-072915	
and) 26-CA-076655	
	26-CA-078241	
TEAMSTERS LOCAL UNION NO. 480,		
affiliated with INTERNATIONAL)	
BROTHERHOOD OF TEAMSTERS,)	
)	
Charging Party.		

BRIEF IN OPPOSITION TO EXCEPTIONS ON BEHALF OF UNITED PARCEL SERVICE, INC.

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SUMMARY OF ARGUMENT

The Union takes exception to ALJ Brakebusch's Decision that United Parcel Service, Inc. ("UPS") did not violate the Act when the Union: (1) made incomplete and ambiguous information requests; and (2) refused to acknowledge documents responsive to the Union's information requests. The Union reasons that it was entitled to every document that it had requested and that UPS was required to respond to thousands of requests for information – even if these requests were made on the same day or within a few short days of receiving them. This reasoning ignores settled authority that an employer need not provide information responsive to incomplete and ambiguous requests for information, overly broad and unduly burdensome requests, or requests that are submitted in bad faith. The ALJ's credibility findings that the Union engaged in tactics designed to "imped[e], delay[] or prevent[] UPS from lawfully responding to ... thousands of requests" and was ultimately "disinterest[ed] in genuine communication with UPS" is supported by substantial and material evidence. These findings also support UPS' Exceptions that the Union's predominant motivation was to harass, overburden, and inconvenience it with information requests. The ALJ - albeit correctly concluding that UPS did not fail to provide, or unlawfully delay in providing, information responsive to those requests subject to the Union's Exceptions - failed to consider the totality of the record evidence and remedy the Union's bad faith. UPS' Exceptions to the ALJ's decision establishes that it had no duty to respond to the Union's bad faith requests or produce documents that are irrelevant, overly broad and unduly burdensome.

STATEMENT OF THE CASE

A detailed counter-statement of facts can be found in UPS' Brief in Support of Exceptions that was filed with the Board on September 6, 2013.

ARGUMENT

A. The Duty to Produce Information is not Absolute.

An employer's obligation to produce information is not as absolute as the Union alludes. The obligation is triggered by a request for "relevant and necessary" information. See East Tenn. Baptist Hosp. v. NLRB, 6 F.3d 1139, 1144 (6th Cir. 1993). The Union's assertion that it is entitled to information whenever it has "some bearing" on an issue between the parties, is inconsistent with settled legal authority that requires that the information requested must "substantiate specific assertions on which [the union] premises its bargaining positions." KLB Industries v. NLRB, 700 F.3d 551, 563 (D.C. Cir. 2012); see also Coca-Cola Bottling Co., 311 NLRB 424, 425 (1993) ("If the information requested is shown to be irrelevant to any legitimate union collective-bargaining need, however, a refusal to furnish it is not an unfair labor practice"). An employer is not obligated to provide information merely because the Union requests it. See NLRB v. Truitt Mfg., 351 US 149, 153-54 (1956). That obligation is tethered by another - the obligation to meet and confer in good faith. A union cannot demand, as it did here, the production of duplicative and voluminous records while remaining utterly unwilling to clarify the information sought or to limit the number of its requests. See Int'l Brotherhood of Teamsters, Local Union 373 v. United Parcel Service, Inc., JD(ATL)-21-12 (ALJ Locke, August 15, 2013) ("where agreeing to an appropriate accommodation would cause no harm, the refusal to narrow the request by eliminating redundant documents, or even to explain why all are needed, is evidence of a vindictive objective"); Exxon Chemical Americas and Exxon Corp.,

2000 WL 33664332 (ALJ Carson II, July 27, 2000) (noting that unreasonable bargaining demands can be an indicia of bad faith bargaining). Such conduct smacks of bad faith and alleviates any duty to produce documents responsive to information requests. <u>Id</u>.

B. The ALJ Correctly Found that UPS was Not Obligated to Produce Information Responsive to the Following Requests:

Date of	Complaint	General Counsel	ALJ Opinion
Request	Paragraph	Exhibits	<u>Page</u>
7/26/2010	110, 273-279	110, 273-279	27
4/11/2011	335	335	25-26
4/18/2011	318-321, 334	318-321, 334	25-26
5/3/2011	286-287	286-287	23-24
5/16/2011	336	336	25-26
5/27/2011	288-289	288-289	24
7/1/2011	296-298, 339	296-298, 339	24-26
9/27/2011	110, 273-279	110, 273-279	27
10/10/2011	110, 273-279	110, 273-279	27
11/3/2011	110, 273-279	110, 273-279	27
11/16/2011	110, 273-279	110, 273-279	27
12/15/2011	110, 273-279	110, 273-279	27
3/7/2012	353, 475, 480	353, 475, 480	29-30
3/9/2012	353	353	29-30
3/11/2012	286-289, 296-298,	286-289, 296-298,	23-26
	318-321, 334-336,	318-321, 334-336,	
	339	339	
3/12/2012	354	354	29-30
3/13/2012	353, 475, 480	353, 475, 480	29-30
3/14/2012	286-289, 296-298,	286-289, 296-298,	23-26
	318, 320-321, 335-	318, 320-321, 335-	
	336, 339	336, 339	
3/15/2012	319, 334	319, 334	25-26
3/18/2012	353, 475, 480	353, 475, 480	29-30
3/20/2012	354	354	29-30
3/23/2012	354	354	29-30
3/27/2012	286, 288-289, 296-	286, 288-289, 296-	23-26
	298, 318-319, 321	298, 318-319, 321	
3/29/2012	354	354	29-30
4/4/2012	354	354	29-30

The Union argues that the ALJ erred when she dismissed the above allegations because all of the information requested was not produced. Charging Party's Brief at 6. This argument ignores the manner and method in which the information was requested and highlights the Union's bad faith motive. The Union concedes that it requested voluminous records, never compromised on any of its requests, and intentionally forced UPS to expend countless hours responding to vague and ambiguous requests, many of which the ALJ correctly found were "arguably not useful or even relevant to the issue of the grievance." ALJ Decision at 34. An employer does not commit an unfair labor practice "[w]here, [like here], the union has sought considerably more information than is required for or is relevant to its collective bargaining purposes . . ." See Kroger Co. v. NLRB, 399 F.2d 455, 459 (6th Cir. 1968). The Union's exceptions to each unfounded Complaint paragraph are addressed in turn below.

1. Complaint Paragraphs 273-79, 1101

The Union argues that that the ALJ erred when she did not compel UPS to produce hundreds of documents that were requested in connection with Grievance Nos. 14025, 14028, 14043, 14046, 14051, 14204, 14229, and 10197. Charging Party's Brief at 7. Yet, these requests only highlight the Union's failure to "read or review" the information provided to it or, at the very least, determine whether the documents requested were necessary to its grievances. Tr. at 169-70, 178, 189-90, 194, 245-46, 510, 585. The ALJ put it best:

"In each instance, the Union repeated its ... initial request without any acknowledgment that [UPS] had already provided [certain] information twice ... [and there is] no evidence that the Union read, reviewed, or modified its requests in response to the information that was furnished by [UPS]. Overall, the Union's response to [UPS'] production of records raises a question as to whether the

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¹ Complaint Paragraph 110 does not involve a request for an "Employee Record." GC Exhibit No. 110. The record evidence shows that most of the information requested was provided. <u>Id</u>.

Union's priority was the receipt of the requested information or the opportunity to assail [UPS] with additional information requests during a 10-week period in the months prior to the filing of the first charge."

ALJ Decision at 28. While characterizing its requests as nothing more than an "inconvenience," the Union ignores the ALJ's finding that the Union's actions resulted in needlessly duplicative responses. ALJ Decision at 35. Where, as here, the Union's objective is to "inconvenience" the employer by requiring it to gather, copy, and furnish a large quantity of documents, the requirement to produce all of the documents requested is alleviated. See Int'l Brotherhood of Teamsters, Local Union 373 v. United Parcel Service, Inc., JD(ATL)-21-12 (ALJ Locke, August 15, 2013); NLRB v. Hawkins Const. Co., 857 F.2d 1224, 1228 (8th Cir. 1988) (where the purpose of a request for information is to harass the employer the fact that the information may also be relevant is immaterial).

Nevertheless, UPS produced some documents so that a few documents were not produced is not evidence of bad faith bargaining by UPS. See Good Life Beverage Co., 312 NLRB 1060, 1062 (1993). UPS' substantial compliance, in spite of the Union's bad faith intent, establishes just the opposite and the Union fails to cite to any authority to the contrary.

2. Complaint Paragraphs 353, 354, 475, and 480

The Union asserts, without any supporting authority, that the ALJ erred when she dismissed paragraphs 353, 354, 475, and 480. Charging Party's Brief at 7. These paragraphs involved requests for multiple categories of information related to UPS' third party vendors. Again, the Union takes the untenable position that UPS engaged in bad faith bargaining because it did not produce the documents requested. This assertion ignores the manner, nature and

timing of the Union's requests that inhibited UPS from properly responding to them. The ALJ explained:

"On March 9, 2012, and only two days after making this comprehensive 15-item request, Hughes made an additional request for this same information. On March 13, 2012, Hughes sent another requests seeking this same information. On March 18, 2012, and 3 days after filing its second charge in this matter, Hughes sent an additional request for this information. On April 6, 2012, the Union filed its third charge in this matter. Thus, as of the date of the Union's third charge, the Union had already submitted four successive requests for this same extensive listing of information in less than a month.... Although there is no evidence that [UPS] provided the information prior to the filing of the third charge, ... I question whether [UPS] could have adequately and promptly responded before the filing of this charge."

ALJ Decision at 30.

Furthermore, it is undisputed that the Union inundated UPS with over 150 requests for information only two weeks prior to filing its third charge and submitted several successive requests for multiple pieces of information no less than a month prior to that.² Therefore, the only "clear pattern and practice" was the Union's attempt to overwhelm UPS with voluminous requests to add to its existing charge. The Union even admits that it: (1) failed to make individualized determinations regarding its need for information; (2) had no intention of even using certain information UPS provided; and (3) simply stored information in its server after the information was provided to it. ALJ Decision at 16-18, 22-25; Tr. at 86, 194, 216, 245-46, 281, 335, 430-32, 450, 464-66, 483, 510, 585. These admissions support the ALJ's finding that the

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² GC Exhibit Nos. 347, 408-417, 419-420, 438-440, 459-462, 465-466, 473, 539-541 (3/4/2012); 286-289, 296-298, 301-302, 318-322, 324-330, 332-339 (3/11/2012); 286-289, 296-298, 301-302, 318-330, 332-333, 335-339, 474, 503, 538, 542 (3/14/2012); 284-285, 290-294, 354, 376-377, 399-400, 402, 425-426, 463, 476-479, 496-498, 533-535, 543 (3/29/2012); 284-285, 290-294, 354, 376-377, 399-400, 402, 425-426, 463, 476-479, 496-498, 533-535, 544 (4/4/2012).

Union was more interested in requesting information as opposed to receiving it, thereby, alleviating UPS' obligation to fully comply with the Union's requests. ALJ Decision at 35.

3. Complaint Paragraphs 286-89, 318-21, 334-36, and 339

The Union also asserts that UPS violated the Act as alleged in paragraphs 286-89, 318-21, 334-36, and 339 because the documents requested were "fully apparent" to it. Charging Party's Brief at 7-8. These paragraphs involved several requests for information that were made between March 30, 2011 and July 1, 2011 in connection with 29 separate shifter-related grievances. GC Exhibit Nos. 286-89, 318-21, 334-36, and 339. All of these requests demanded the same type of documents (timecards, staffing reports, shift reports, payroll histories, and weekly operations reports) without any identifying information including the time periods and the individuals or departments involved in the request. <u>Id</u>. Despite the lack of specificity in these requests, UPS, in good faith, responded to them by providing available payroll histories, staffing reports, timecards and weekly operations reports. Complaint Par. Nos. 286-89, 318-21, 334-36, and 339.

There is no record evidence that supports the Union's position that these requests were "apparent," nor does the Union attempt to cite any. In fact, the Union's actions in clarifying these requests months, and at times, more than a year later illustrates the problem with its assertion.

The ALJ correctly found that UPS' "ability to adequately respond was significantly hampered by the Union's use of nonspecific requests" and "lend[s] further support for [the] argument concerning the Union's [improper] motivation." ALJ Decision at 16. The Union itself characterizes its "cookie cutter" information requests (shift reports, staffing reports, time cards,

weekly operating reports, and payroll histories) as "pro forma and lacking detail." Charging Party's Brief at 7. There is no dispute that that the Union's initial requests never specifically identified the time periods and the individuals or departments involved. Accordingly, these requests lacked sufficient specificity to put UPS on notice of what information was needed and, therefore, did not trigger UPS' obligation to provide responsive information. See AMF Bowling Co. v. NLRB, 977 F.2d 141, 146 (4th Cir. 1992) (there is no obligation to respond to vague and ambiguous requests for information).

C. The ALJ Correctly Dismissed Complaint Paragraph 14 Because of A Pleading Error.

The Union excepts the ALJ's decision to dismiss paragraph 14 because of a pleading error. Charging Party's Brief at 9-10. The Acting General Counsel alleges in paragraph 14 that UPS unlawfully delayed in providing requested information from August 29, 2011 through January 25, 2012. The Union, however, never requested information on August 29, 2011. The Union asserts that the ALJ should have ignored the error and found merit to the allegation. Charging Party's Brief at 10. This assertion has been addressed and rejected by the Board. See U.S. Rubber Co., 93 NLRB 1232 (1951) ("to make independent findings of general interference in the absence of specific allegations of such violations, without having first put the party charged on notice, by pleading, and afforded an opportunity to join and meet the issue raised would not only be gratuitous, volunteered action but would be a denial of due process"). The proof did not support what was alleged by the Acting General Counsel in Complaint paragraph 14, dismissal was entirely appropriate.

D. The ALJ Correctly Found that UPS Did Not Unlawfully Delay When Producing Information Responsive to the Following Requests:

Dates of Alleged	Complaint	General Counsel	ALJ Opinion
<u>Delay</u>	<u>Paragraph</u>	Exhibits	<u>Page</u>

Dates of Alleged	Complaint	General Counsel	ALJ Opinion
<u>Delay</u>	<u>Paragraph</u>	<u>Exhibits</u>	<u>Page</u>
6/29/10 to 8/9/10	238, 240	238, 240	11-12
8/31/11 to	283	283	11-12
10/27/11			
9/2/11 to 10/25/11	345	345	11-12
12/6/11 to 1/30/12	304	304	11-12
12/7/11 to 2/7/12	30-43, 50, 53-54,	30-43, 50, 53-54,	11-12
	58-61, 65-68, 355-	58-61, 65-68,	
	56	355-56	
12/7/11 to 2/1/12	50	50	11-12
12/7/11 to 2/15/12	58	58	11-12
12/9/11 to 2/7/12	44-49, 51, 52, 55-	44-49, 51, 52, 55-	11-12
	57, 62-64	57, 62-64	
12/9/11 to 2/1/12	44-49	44-49	11-12
12/9/11 to 1/26/12	52	52	11-12
12/9/11 to 2/16/12	69	69	11-12
12/20/11 to 2/7/12	361-64, 367, 369,	361-64, 367, 369,	11-12
	374, 434, 445,	374, 434, 445,	
	446, 449, 469-72	446, 449, 469-72	
12/20/11 to 2/8/12	467	467	11-12
12/20/11 to	446	446	11-12
2/17/12			
12/21/11 to 2/7/12	468	468	11-12
12/22/11 to	343	343	11-12
1/30/12			
12/22/11 to 2/7/12	447	447	11-12
12/22/11 to	448	448	11-12
1/27/12			
12/22/11 to 2/1/12	342, 404	342, 404	11-12
12/22/11 to 2/17/12	447	447	11-12
12/22/11 to 2/18/12	342, 404	342, 404	11-12
12/27/11 to 2/7/12	435-37, 456	435-37, 456	11-12
12/27/11 to	435-37	435-37	11-12
2/17/12			
12/27/11 to 2/23/12	456	456	11-12
1/20/12 to 2/20/12	368	368	11-12
1/20/12 to 2/22/12	370-71, 379, 392-	370-71, 379, 392-	11-12
1,20,12 00 2,22,12	95, 398, 427	95, 398, 427	11 12
1/20/12 to 2/23/12	429-30	429-30	11-12
3/11/12 to 4/13/12	298, 301-02	298, 301-02	11-12
J/11/12 tO 7/13/12	270, 301-02	270, 301-02	11-14

The Union argues that the ALJ erred when she failed to find that UPS unlawfully delayed in responding to the above information requests. Charging Party's Brief at 8-9. It contends, without citing to any record evidence, that UPS' efforts in responding to information was unreasonable because the information was "easily assessable." This contention is inconsistent with the following record evidence:

- From February 2008 through April 2012, the Union paralyzed UPS with information requests by demanding at least 1,600 separate information requests with multiple sub-parts in each request. GC Exhibit No. 9; Tr. at 502-03; ALJ Decision at 13.
- The Union submitted up to 700 information requests during a three month period immediately preceding and following the filing of the Union's first unfair labor practice charge.³
- The Union admits that it requested an "overwhelming volume" of documents and that the process of responding to information requests is "very burdensome" because UPS has "different operations, different areas and departments," and it

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³ GC Exhibits Nos. 70-75, 95-108, 125, 141-142, 482-493, 499-502, 504-521 (9/23/2011); 80-83,119, 121-137, 141-159, 163, 182-183, 522-524, 526, 528-529 (9/24/2011); 76-79, 84-91, 138-140, 160-162, 167-181, 184-210, 223-226, 244-246, 250, 252-257, 259-260, 262, 525 (9/25/2011); 109-118, 164-166, 227-243, 247-249, 251, 258, 261, 263-279, 494, 527 (9/27/2011); 15-28, 50, 70-210, 223-280, 282, 299-300, 303, 305-317, 341, 436, 483-494, 499-502, 504-529 (10/10/2011); 10, 15-28, 120, 280, 282, 299-300, 303, 305-317, 331, 341, 344 **(10/16/2011)**; 109-118, 164-166, 227-243, 247-249, 251, 258, 261, 263-279, 494, 527 (11/16/2011); 30-43, 50, 53-54, 58-61, 65-68, 355-357, 388 (12/7/2011); 110, 164-166, 227-236, 238, 240-243, 247-249, 253, 261, 263-269, 271-279, 341, 494 (12/15/2011); 14, 29-69, 351, 355-357, 375, 421-424, 452-456 **(12/16/2011)**; 10-11, 304, 331, 342-344, 358-364, 366-372, 374, 398, 404, 431, 434-437, 444-447, 449, 467-472 (12/27/2011); 365, 368-373, 379-398, 401, 427-433, 457-458 **(1/20/2012)**; 365, 368, 370-373, 378-385, 387-398, 403, 427-433, 457-458, (1/28/2012); 347, 365, 368, 370-373, 379-382, 384-393, 395-396, 398, 427, 429, 431-433, 450-451, 457-458, 537-539 **(2/10/2012)**; 407-417, 419-420, 438-441, 459-462, 465-466, 473 (2/27/2012); 347, 408-417, 419-420, 438-440, 459-462, 465-466, 473, 539-541 (3/4/2012); 286-289, 296-298, 301-302, 318-322, 324-330, 332-339 (3/11/2012); 286-289, 296-298, 301-302, 318-330, 332-333, 335-339, 474, 503, 538, 542 **(3/14/2012)**; 284-285, 290-294, 354, 376-377, 399-400, 402, 425-426, 463, 476-479, 496-498, 533-535, 543 (3/29/2012); 284-285, 290-294, 354, 376-377, 399-400, 402, 425-426, 463, 476-479, 496-498, 533-535, 544 (4/4/2012).

has "different record keeping devices that keep track of time or times of work performed and things of this nature." Tr. at 92, 357-60, 404, 466.

• UPS was required to devote a significant amount of resources to keep up with the Union's information requests including: (1) moving a full-time supervisor to the District Labor Department to assist Whites Creek in responding to information requests; and (2) expending over forty hours every week to respond to requests. Tr. at 500-01, 575-76, 576-77, 579, 589.

The totality of the record evidence supports the ALJ's finding that: (1) there was minimal delay that did not "severely diminish[] the usefulness of the information" requested; and (2) any delay was directly caused by the Union's voluminous and duplicative information requests. ALJ Decision at 11. Despite the Union's contrary averments, there is no "hard and fast time guideline for determining compliance ... and the reasonableness of [a] response is determined by the [particular] facts and circumstances" of each case. See In re West Penn Power Co., 339 NLRB 585 (2003); Union Carbide Corp., 275 NLRB 197 (1985) (finding a 10-month delay to be reasonable under the circumstances). Here, the Union requested information without determining its necessity and failed to review what it received, thereby, submitting over 314 duplicative requests for information. ALJ Decision at 27. To now argue that it was unreasonable for UPS to respond as it did and in the timeframe that it could is nothing less than incredible. The ALJ put it best:

"The overall record, including the testimony of Hughes, reflects that the Union routinely requested the same category of documents if the grievance related in any way to employees performing shifter work, without any apparent attention to whether these documents were actually required to analyze the merits of the grievance.... The record demonstrates

⁴ The Union incorrectly claims that the ALJ found no violation for delays that exceeded 90-days in length. None of these allegations involved responses that were received more than 90 days after a request was made.

⁵ This tactic can be found in GC Exhibit Nos. 74-75, 95-155, 157-284, 286-289, 296-318, 321, 331, 334, 345, 347-348, 353, 355-356, 358-359, 368, 370-373, 379-382, 384-385, 387-393, 395-396, 398, 403, 421-424, 428-429, 431-433, 448, 458, 483-532, 537, and 541.

that the Union's use of these standard requests, in conjunction with the timing of its multiple requests, has also hindered the process of obtaining information from the Respondent." ALJ Decision at 17.

Furthermore, the Union's claims that it "regularly requested specific, defined information to process each grievance" is belied by the fact that it admittedly demanded the production of documents related to over 150 "vague and ambiguous" information requests that had no identifying information.⁶ ALJ Decision at 16; GC Exhibit Nos. 1 and 2.

Based on the voluminous nature of the Union's requests and its intent to paralyze UPS with these requests, which it in fact did, the ALJ correctly held that it was reasonable for UPS to respond when it did so as not to jeopardize its business. ALJ Decision at 18; Tr. at 428-29.

CONCLUSION

Except as to UPS' own exceptions, the ALJ's findings and conclusions must be sustained. The totality of the record evidence demonstrates that the Union utilized the information request process in bad faith, and that UPS had no obligation to produce documents responsive to vague, overly broad, duplicative, and unduly burdensome information requests.

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⁶ These boilerplate requests for information can be found in GC Exhibit Nos. 14-28, 30-33, 35-43, 58, 69-109, 111-272, 280-303, 305-19, 321-22, 324-39, 341, 344-45, 349-50, 355-56, 358-74, 379-96, 398, 405-17, 419-20, 427-33, 435-41, 444, 448, 456-62, 465-66, 468, 470-73, 483-535.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via electronic mail upon:

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this the 25th day of November, 2013.

s/ Aron Z. Karabel